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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 720

PETER VAN DER WEYDE,

Petitioner,

vs.

THE STEAMSHIP "TAIGEN MARU," HER TACKLE, APPAREL, ENGINES, BOILERS AND FURNITURE, AND OCEAN TRANSPORT COMPANY, LTD., A CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

JOHN P. HANNON,
WM. P. LORD,
T. WALTER GILLARD,
Counsel for Petitioner.

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To the Supreme Court of the United States:

The petitioner, Peter Van der Weyde, relying upon Title 28, Section 347, U. S. C. A. (Sec. 240 of the Judicial Code) to sustain the jurisdiction of this Court, respectfully shows as follows:

On the 17th of March, 1922, petitioner was employed at Astoria, Oregon, as a seaman on the *S. S. Luise Nielsen,* for a round-trip voyage between the Columbia River and the Orient, to be discharged at the Port of Portland. The vessel was registered under the laws of Norway, and the

master and commanding officers of the vessel came from Norway, but the able and ordinary seamen were employed in Portland and Astoria to make this round-trip voyage. The vessel was owned by B. Stolt Nielsen & Company of Haugesund, Norway, and at the time was under charter to an Oregon corporation.

On the 16th of May, 1922, while the vessel was about six days out from the Columbia River, the libelant was seriously injured by falling through an unguarded hatch. It is claimed that his injuries were occasioned by negligence.

On the 15th of September, 1922, petitioner filed suit in the District Court for Oregon, libeling the vessel. The Norwegian Consul filed a protest against the court taking jurisdiction on the grounds that the controversy involved a controverted claim between a citizen of The Netherlands and a vessel owned by a Norwegian corporation, and on the 9th of April, 1924, the court allowed the intervention and dismissed the libel on June 2, 1924.

At the time of the hearing of the intervention the Norwegian Consul, who was an attorney of the Federal Court in Portland, personally appeared and assured the court that the laws of Norway provided a scheme of Workmen's Compensation insurance for seamen injured on vessels belonging to Norway, and that Van der Weyde would be paid a compensation in accordance with the provisions of such act, and that already the sum of $1,800 had been paid on account of medical treatment, and assured the court that compensation would be paid Van der Weyde. Thereupon the court entered a decree dismissing the libel.

The vessel was thereafter sold by the owners to the claimant herein, Ocean Transport Company, Ltd., and was renamed the *Taigen Maru,* and she has been without the jurisdiction of the State of Oregon, where petitioner resides, and who is a resident alien.

On the 26th of January, 1933, this vessel was berthed at Longview, Washington, and the vessel was libeled in the District Court of that district upon the cause of suit herein referred to. Thereafter, C. Stang Anderson, Acting Consul of the Kingdom of Norway, resident at Seattle, petitioned the court for leave to intervene for the purpose of filing exceptive allegations directed to the libel. It was shown by these exceptive allegations that in making sale of the vessel, the Norwegian owner had warranted the vessel against liens, and it was obvious that the vessel was released upon a bond being furnished either by the Norwegian government, acting through its Consul, or by the former owners.

The former owners had no general agent in Oregon, or in the United States at the time the petitioner was injured, or subsequently, upon whom service of process in a suit in *personam* could be had.

Van der Weyde filed a response to the exceptive allegations of the intervenor wherein he showed to the court that he was a resident alien, and had been a resident of the United States since 1900, and had followed the vocation of a seaman on vessels of American registry. He alleged his employment as a seaman on the *Luise Nielsen*, and the fact that he was permanently and totally disabled as the result of the injuries sustained on the vessel. He also set forth the representations to the court of the Norwegian Consul in relation to the payment to him of compensation, and that had he been able to secure this compensation he would have been able to have lived in comparative comfort. He further alleged that after the dismissal of the intervention proceedings and remanding of the proceedings against the ship to the Norwegian Consul, he from time to time called upon the Norwegian Consul and requested payment of compensation, and that the Norwegian Consul informed him that the "money was lying in Norway" under a Norwegian insurance act, and the same would be received shortly.

On the 11th of June, 1929, petitioner addressed the Minister from The Netherlands at Washington, D. C., and requested him to make a demand upon the Kingdom of Norway to pay petitioner the compensation. The Netherlands minister replied that the owners had done everything that could be claimed on the ground of the Treaty of March 7, 1911, between The Netherlands and Norway concerning maritime accidents and indemnifications. In other words, because Van der Weyde was not a resident of The Netherlands he was unable to procure his country to compel the payment of compensation.

Petitioner also showed that the entire liability was covered by a policy of insurance with a marine insurance company known as Assuranceforeningen Skuld of Oslo, Norway, and that neither the present nor former owner was required to pay the liability in event a decree awarding damages was made by the court.

Petitioner then prayed that the district court hear the cause and assess damages under the general principles of the maritime laws of the United States relating to seamen, if the court should be so advised after hearing of the testimony, or if the court were of the opinion that the benefits of the Workmen's Compensation Act of Norway should be paid petitioner, the court should compel the intervenor to give assurances for the payment of compensation. It was also shown by the response that the parties were not prejudiced by the loss of witnesses, inasmuch as there were three witnesses to the accident who resided in Portland.

On the 28th day of June, 1933, the court entered an order reciting the appearances of the parties and proctors, and stating "having concluded that in the exercise of its discretion the court should not hear said cause upon the merits," and dismissed the cause.

The case was then appealed to the United States Circuit Court of Appeals, and on the 19th day of November, 1934,

the Court delivered an opinion. The Court found that in suits between foreigners it was discretionary for the Court to assume jurisdiction, and also that a treaty between the United States and Norway of 1827 prevented the Court from taking jurisdiction, and affirmed the order dismissing the libel.

Reasons Relied On for the Issuance of the Writ.

The question presented is one of admiralty jurisdiction involving important questions that have frequently arisen and will arise in the future regarding the rights of seamen shipping on foreign vesels under charter to American shipping companies, and there is no authoritative decision by this Court defining what these rights may be.

There is conflict of authorities as to whether or not it is an abuse of discretion for the court to recognize the protests of a foreign consul and refuse to retain jurisdiction of the cause and try the case on the merits. The decisions of the different Circuit Courts are not in accord as to whether or not it is an abuse of discretion to refuse jurisdiction in such cases as presented by the facts in this case. This is illustrated in the case of *The Eir* (C. C. A.), 60 F. (2d) 124, and the decision in this case. The Fourth Circuit and the Ninth Circuit are in direct conflict upon this point. In the case of *The Eir*, Persson, a Swedish seaman, signed on as a member of the crew of the *Eir*, a Norwegian vessel, at Mobile, and while the vessel was lying at Hampton Roads he was injured as the result of which he libeled the vessel in the District Court at Norfolk. It was moved, as in this case, that the trial court decline to take jurisdiction and a hearing was had upon this question. Testimony was taken and the vice consul of Norway at Norfolk filed a protest against the court taking jurisdiction on the ground that the controversy lay between a Swedish seaman and a Norwegian ship, and that by the Norwegian law a seaman

may not receive damages for personal injuries from a ship but is entitled to share in an insurance fund provided by the Norwegian Government and maintained at the expense of ship owners for the purpose of providing compensation to injured seamen.

As in this case, the trial court declined to take jurisdiction and dismissed the libel and an appeal was taken. In a *per curiam* opinion the order of the trial court was reversed and the district court was directed to take jurisdiction of the suit, and the Court of Appeals held that there was a clear denial of justice for the reason that libelant's only remedy was an appeal to the authorities and courts of Norway.

It should not be lost sight of that it was clearly shown by the record that Van der Weyde has been without a remedy for a long period of time, and that it is impossible for him to secure justice by any appeal to the authorities in Norway, or to go to Norway to litigate his claim.

Another reason why this Court should take jurisdiction is to decide an important question arising under a treaty, and whether or not the provisions of this treaty have not been abrogated by the adoption of the Seamen's Act.

We shall not attempt in this petition to set forth all of the important questions which have arisen in this case, and rest our reasons for asking the Writ upon the general proposition that there is a direct conflict between the decisions of the different Court of Appeals on an important question arising under the maritime law, and on the evident proposition that the petitioner has been denied justice in the courts on the theory that either the court has a right to exercise discretionary jurisdiction, or upon the theory that a treaty, to which his country is not a party, bars his rights. It should not be lost sight of that the reason for the action of Norway was because there was not a reciprocal compensation agreement between the United States and

Norway, and this was the basic reason for declining payment of compensation by Norway.

Because of this difference in authorities, and the necessity for settling for the whole country this important question of jurisdiction, petitioner respectfully prays that this Court will issue a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that Court to certify to the record in this cause for review and decision by this Court of the question involved, and your petitioner will ever pray.

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Dated this 11th day of February, 1935.

I, John P. Hannon, hereby certify that the foregoing petition is in my opinion well founded in law, and not interposed for delay.

JOHN P. HANNON.